

Bob Nance

From: Paula Jantzen [pjantzen@ryanwhaley.com]
Sent: Sunday, April 19, 2009 9:07 PM
To: Trevor.Hammons@oag.ok.gov
Cc: Melissa Keplinger; mvahlberg@gablelaw.com; ajsiegel@hhlaw.com; bblakemore@bullock-blakemore.com; bchadick@bassettlawfirm.com; bfreeman@cwlaw.com; bjones@faegre.com; bnarwold@motleyrice.com; bryan.burns@tyson.com; cdolan@faegre.com; charles.moulton@arkansasag.gov; cmirkes@mhla-law.com; ctucker@rhodesokla.com; cxidis@motleyrice.com; daniel.lennington@oag.ok.gov; david@cgmlawok.com; dchoate@fec.net; dehrich@faegre.com; dmann@mckennalong.com; David Page; David Riggs; dustin.darst@kutakrock.com; erin.thompson@kutakrock.com; fbaker@motleyrice.com; fc.docket@oag.state.ok.us; fevans@lathropgage.com; fftzpatrick@motleyrice.com; gchilton@hcdattorneys.com; gtodd@sidley.com; gweeks@bassettlawfirm.com; gwo@owenslawfirm.com; imoll@motleyrice.com; Jean_Burnett@oag.state.ok.us; jelrod@cwlaw.com; jgraves@bassettlawfirm.com; jgriffin@lathropgage.com; jjorgensen@sidley.com; Joe Lennart; jorent@motleyrice.com; jrailey@titushillis.com; jrussell@fellerssnider.com; jtbanks@hhlaw.com; jtucker@rhodesokla.com; jwisley@cwlaw.com; kctucker@bassettlawfirm.com; Kelly_burch@oag.state.ok.us; kendra.jones@arkansasag.gov; klee@faegre.com; klee@rhodesokla.com; kwilliams@hallestill.com; lbullock@bullock-blakemore.com; ltheath@motleyrice.com; lward@motleyrice.com; mcollins@faegre.com; mgraves@hallestill.com; mhops@sidley.com; michael.bond@kutakrock.com; mrousseau@motleyrice.com; njordan@lightfootlaw.com; nlongwell@mhla-law.com; phixon@mhla-law.com; rconrad@uschamber.com; rer@owenslawfirm.com; reynolds@titushillis.com; rfunk@cwlaw.com; Richard Garren; richard.ford@crowedunlevy.com; Bob Nance; robert.george@tyson.com; rredemann@pmrlaw.net; rsanders@youngwilliams.com; rt@kiralaw.com; sbartley@mwsgw.com; Sharon Gentry; smcdaniel@mhla-law.com; steve.williams@youngwilliams.com; Sharon Weaver; tcgreen@sidley.com; terry@thwestlawfirm.com; thillcourts@rhodesokla.com; trevor_hammons@oag.state.ok.us; twalker@faegre.com; twebster@sidley.com; vbronson@cwlaw.com; waddell@fec.net; wbassett@bassettlawfirm.com; wcox@lightfootlaw.com; Paula Jantzen

Subject: State of OK v Tyson, et al - Notice of Subpoenas to Produce Documents

Trevor,

In accordance with LCvR37.1, I am available tomorrow afternoon, and anytime on Tuesday, to meet and confer on the issues you raise with respect to the subpoenas we issued on April 16. The documents requested by means of the subpoenas are directly relevant to several statements and claims Dr. Teaf made during his depositions and in his Expert Report. Dr. Teaf claims expertise in a variety of disciplines beyond that which can be supported by his formal education so defendants are entitled to review information related to Dr. Teaf's claimed professional experience. Therefore, the documents sought through the subpoenas are relevant to Dr. Teaf's qualifications as an expert – a matter central to his expert opinions offered in this case.

The discovery "cut-off" was April 16, and issuance of the subpoenas within the discovery deadline set by the Court is consistent with the Court's Scheduling Order and associated modifications (*see, e.g.*, Doc. Nos. 1075 and 1658), and it is also consistent with established practices in the Northern District of Oklahoma. *See, e.g., Rice v. United States*, 164 F.R.D. 556 (N.D. Okla. 1995). Although the district court in *Rice* recognized that a subpoena *duces tecum* issued to third parties constitutes "discovery" within the meaning of the Federal Rules, and within the meaning of the district court's case management order setting a deadline for discovery, the district court held that the relevant inquiry presented by a motion to quash those subpoenas as "untimely" was whether the subpoenas were issued after the close of discovery. *See id.* at 557-58. Our subpoenas were issued on April 16, within the discovery time frame set by the Court in this matter. Therefore, under the analysis set forth in *Rice*, the subpoenas are not untimely.

If you are aware of any contrary authority that supports your position, we ask that you please identify that authority prior to our meet and confer on Monday or Tuesday so that the parties can be fully informed of the issues for which resolution will be sought without aid of the Court. If the State still moves forward with the filing of a motion for protective order after our meet and confer, Tyson does not object to the State's request for expedited consideration of any such motion.

Please let me know when it is convenient for you to discuss these issues tomorrow afternoon or Tuesday. Thank you.

Paula M. Jantzen
Ryan Whaley Coldiron Shandy PC

4/21/2009



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From: Trevor.Hammons@oag.ok.gov [mailto:Trevor.Hammons@oag.ok.gov]

Sent: Friday, April 17, 2009 10:19 AM

To: Melissa Keplinger

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Subject: RE: State of OK v Tyson, et al - Notice of Subpoenas to Produce Documents

Paula,

4/21/2009

I am writing in order to ask you to withdraw your subpoenas issued yesterday as they are:

1. Not relevant.
2. Untimely as discovery closed yesterday.

Please withdraw your notice immediately. If you will not withdraw your notice, then will you agree to expedited consideration of the State's soon to be filed motion for protective order? I would like to set up a time to meet and confer on this issue no later than Monday, if possible.

Thanks and have a good weekend,

Trevor

4/21/2009